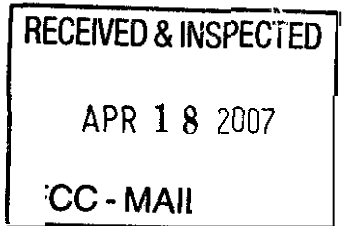


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To: Federal Communications  
Commission  
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Phone:

Re: REQUEST FOR WAIVER  
AND REVIEW  
SLSM - E-RATE

From: San Diego City Schools  
BEN 143662

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Before the  
Federal Communications Commission  
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In the Matter of

SAN DIEGO CITY UNIFIED SCHOOL

DISTRICT, SAN DIEGO, CA

Schools and Libraries Universal Service  
Support Mechanism

File No. SLD 143662

CC Docket No. 02-6  
CC Docket No. 96-45

REQUEST FOR REVIEW OF THE DECISION AND WAIVER OF THE  
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY  
SAN DIEGO CITY UNIFIED SCHOOL DISTRICT, SAN DIEGO, CA

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**I. INTRODUCTION**

1. The San Diego City Unified School District, (the "District") appeals the decision of the Universal Service Administrative Company ("USAC") concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denial of funding due to certain clerical or ministerial errors during the application, to wit, a failure to cite the correct establishing Form 470 number on **Block 5** of Form 471.
2. The District believes that special circumstances exist to justify a waiver of the Commission's rules, and, accordingly files this Request for Review and Waiver of the administrative rules applied to this case.
3. The District requests that the Commission review the decision of USAC **denying** funding on a Form 471 application because a ministerial error lead USAC to decide the District had not complied with the competitive bidding requirement of the SLSM

**II. BACKGROUND**

1. The District completed and filed several E-rate application Form 471's with USAC for the 2000 funding year. All of the applications **filed** by the District were selected for a **SRIR** (Selective Review Information Request) that was initiated on May 2, 2006. The District **supplied** the information requested initially on June 8, 2006. During this time, the District contact Lance Wade was in the midst of dealing with the death of his father and was traveling to Texas and dealing with arrangements. This information supplied consisted of a package that was several inches thick and included copies of signed contracts and addendums for the services that the District purchases from the California State Master Telecommunications Contract (CalNET), along with extensive budget, resource and other relevant information. The SRIR for Year 2006 was the second consecutive such request and the information provided was very similar to the information

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provided in the **initial** year's (Year 2005) request, inclusive of copies of the various agreements signed in conjunction with CalNET. On February 5, 2007 (7 months later), the District was asked to verify that the Form 470 number cited on Block 5 FRN 1416767 for Form 471 application number 508523 was correct. When the number was verified by staff it was done so in error as during the time frame that **the** verification request was made, the District was currently overwhelmed with the filing process for E-Rate Year 2007 and another key staff member had a death in the family on February 3, 2007 that required travel out **of** state for arrangements. Additionally (*and most importantly in our opinion*), when **the** request was made, there was no explanation as to the basis of the need for verification (i.e. PIA had a contract with conflicting dates). Had this information been presented by **PIA** during the request for verification, staff would have had a means by which to verify the alignment of the ACD and CAD, thereby avoiding the need for an appeal or request for waiver as the discrepancy would have been addressed immediately.

2. The District was notified that USAC had denied funding to the District. The District promptly (within days) appealed to USAC. USAC stated that the District had failed to cite the correct Form 470 number even when asked to verify that the Form 470 number cited **was** correct; thereby leading USAC to determine that the competitive bidding requirement was not met.

### 111. DECISIONS ~~BY~~ THE COMMISSION ON APPEALS

1. **As** noted in the decision published in the *Bishop Perry Middle School, New Orleans, LA* appeal, SLD # 487170, the "Commission may waive any provision of its rules on its own motion and for good cause shown." (47 C.F.R. §1.3.) Additionally, a "rule may be waived where the particular facts make strict compliance inconsistent with the public interest." *Northeast*

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*Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

(*Northeast Cellular*).

2. In *Bishop Perry Middle School, New Orleans, LA*, the Commission stated as follows:

As we recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors. We find that the actions we take here to provide relief from these types of errors in the application process will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services. In particular, we believe that by directing USAC to modify certain application processing procedures and granting a limited waiver of our application filing rules, we will provide for a more effective application processing system that will ensure eligible schools and libraries will be able to realize the intended benefits of the E-rate program as we consider additional steps to reform and improve the E-rate program. The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.

As of the effective date of this Order, we require USAC to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. USAC shall also inform applications promptly in writing of any missing or incomplete certifications. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Form 470, FCC Form 471 or associated certifications. USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window. The 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed for E-rate applicants and should be sufficient time to correct truly unintentional ministerial and clerical errors. The opportunity for applicants to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding.

3. In the Request for Review filed by *Glendale Unified School District*, File

No. SLD- 143548 decided on February 1, 2006, the Commission once again

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held that "The **Commission** may waive any provision **of** its rules on its own motion and for good cause shown. **A** rule may **be** waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations **of** hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule."

4. On March 9th, the FCC released the *Academy for Academic Excellence* appeal decision (DA 07-1180) granting waivers to **44** applicants. The Order indicates that waivers were granted to entities who failed to file in a timely manner "due to circumstances beyond their control." The standard for such excuses is broad and includes circumstances such as:
  - a. Personal staff emergencies such as illness of responsible individuals (or their relatives)
  - b. Staff "misunderstandings" or other inadvertent failures
  - c. Vague and unclear rules and instructions
  - d. School reorganizations
  - e. Inclement weather
  - f. Technical system problems

#### IV. DISCUSSION

1. The District believes that under the circumstances **described** above, and pursuant to the applicable rulings by the FCC, the citation of **an** incorrect Form **470** number equates to a ministerial error. In fact, had the additional information that was known only by PIA (conflicting contract dates) been presented to the District in conjunction with the request for verification, the error would have been noted and immediately rectified.
2. District relies on the order in the *Bishop Perry* case, cited *supra*, that

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"USAC [is required] to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and to provide applicants with the opportunity "to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding." In the *Bishop Perry case*, the Commission reviewed the appeals of numerous districts that had made a number of errors in the submission of their applications for E-rate funding. The errors made were similar to the one made by the District in the instant case. The District has complied with the competitive bidding aspect of the SLSM and is entitled to funding under the rules of the program. Had the SLD alerted the District to the reasoning behind the request for verification, there would have been immediate resolution.

3. District also relies on the decision in the *Glendale Unified School District* appeal as cited above. In *Glendale*, the applicant filed a Form 471 which showed an incorrect service start date. When the district submitted a corrected form to the SLD, it was not accepted as it was deemed new information. The Commission granted the district's Request for Review and Waiver, stating that "We find that although Glendale committed an unintentional, clerical error when it listed the incorrect service start date on its FCC Form 486, it adhered to the core program requirements. As we recently noted, the E-rate program is fraught with complexity from the perspective of beneficiaries, resulting in a significant number of applications for E-rate support being denied for ministerial or clerical errors. We find that the action we take here promotes the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the "Act"),



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by helping to ensure that Glendale obtains access to discounted telecommunications and information services.” The District believes that its own clerical/ministerial error is substantially similar ~~to~~ the error cited in the Glendale appeal. Accordingly, the District respectfully requests that the Commission grant the District’s Request for Review and Waiver.

4. In the recently published decision in the Academy for Academic Excellence appeal decision (DA 07-1180), the FCC granted waivers to 44 districts who had made errors in their submissions due to “circumstances beyond their control.” San Diego City Unified School District believes that the facts in the Academy for Academic Excellence appeal are substantially similar to their own in that, due to circumstances **beyond** their control; primarily that the Form 470 request for verification came some 7 months after the initial information was presented and during a time when District staff was unable to completely address the information due to circumstances beyond their control namely the Year 2007 application period responsibilities and the death of a key staff’s family member. Again, the contention is that if PIA (USAC) had presented a clear picture of the reasoning behind the request for additional verification, the District **would not** now have to appeal to the FCC.

**VI. CONCLUSION**

For the reasons discussed herein, the District respectfully requests the Commission grant the Request for Review and Waiver **and** Remand the case to USAC for further consideration pursuant to the E-rate rules.

All further contact should be directed to either Jorge Beltran at [jbeltran@sandi.net](mailto:jbeltran@sandi.net) or Kimberly Friends at [kfriends@csingconsulting.com](mailto:kfriends@csingconsulting.com).